CC Docket Nos. 96-98
97-137, 97-208, 97-231

OPENING STATEMENT OF JOSEPH GILLAN
on behalf of the
COMPETITIVE TELECOMMUNICATIONS ASSOCIATION
before the
FCC FORUM ADDRESSING COMBINATIONS OF UNBUNDLED NETWORK ELEMENTS
June 4, 1998

Introduction

This public forum addresses one of the most pressing issues delaying the development of mass-market local competition and achieving the competitive promise of the Telecommunications Act of 1996: how will ILECs provide entrants the non-discriminatory access they require to combine network elements in the wake of the 8th Circuit's decisions?

I am appearing today with Mr. Robert Falcone of AT&T who will explain technical details of the competitors' proposal to use the "recent change process" to separate and recombine the local switch and loop network elements. This is the method most comparable to the access used by the ILEC's themselves, and the only method that can be implemented electronically, thereby establishing the routine and inexpensive customer migration systems necessary to support mass-market competition.

The 8th Circuit's Decision

As a threshold observation, it is important to remember that the 8th Circuit affirmed the basic foundation of the Commission's policies concerning network element combinations. The 8th Circuit rejected each of the ILEC's objections to an entrant providing service entirely using network elements obtained from the ILEC (i.e., the platform). The only issue created by the Court resulted from its conclusion that ILECs are not obligated by the 1996 Act to deliver network elements in a combined and working configuration. The issue is not *whether* entrants have a right to the platform, the issue is only *how* it is initially configured.

Furthermore, it would appear that a large measure of the Court's reasoning was premised on a false assumption. That is, the Court *assumed* that because the ILECs objected to the Commission's rules concerning access to combinations, that the ILECs would prefer to grant entrants the access needed to combine the elements themselves:

> *The FCC and its supporting intervenors argue that because the incumbent LECs maintain control over their networks it is necessary to force them to combine the network elements, and they believe that the incumbent LECs would prefer to do the combining themselves to prevent the competing carriers from interfering with their networks. Despite the Commission's arguments, the plain meaning of the Act indicates that the requesting carriers will combine the unbundled elements themselves; the Act does not require the*

> ***incumbent LECs to do all of the work. Moreover, the fact that the incumbent LECs object to this rule indicates to us that they would rather allow entrants access to their networks than have to rebundle the unbundled elements for them.***[1]

Experience since the Court's decision, however, has shown that the Commission's expectation was well founded. Rather than choosing among the two alternatives recognized by the Court -- either allow entrants non-discriminatory access to combine elements or combine the elements for them -- the ILECs have sought to impose unnecessary and discriminatory collocation obligations. Assuming the 8th Circuit's decision is not reversed by the U.S. Supreme Court, the Commission must now define the basic form of the non-discriminatory access that ILECs must provide entrants to combine network elements.

Combining the Loop and Switch Network Elements

The combination most relevant to mass-market local competition involves the combination of the local loop and local switching network elements.[2] Before turning to the unique requirements of this combination, it is also important to note that other forms of competition also require non-discriminatory access to combine network elements or, in the alternative, an ILEC willing to combine the elements themselves.[3] The focus on combining the loop and local switch elements is not intended to diminish the importance of more specialized combinations; it is rather a reflection of the fact that the loop/switch combination will form the baseline condition for mass-market competition to proceed.

The central conclusion of the 8th Circuit's rehearing decision is that the 1996 Act does not require an ILEC to supply preconfigured and working combinations of network elements. Although the decision thus sanctions the separation of the loop and local switching network elements, it does not confer a right to do so using the most costly, manual and disruptive practice possible. Importantly, separating the local loop and local switching *network elements* does not require a

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[1] Iowa Utilities Board v. FCC, 120 F.3d 753, 813 (8th Cir. 1997) (emphasis in original).

[2] Although other network elements are necessary to provide local exchange and exchange access service, the loop/switch combination is the central combination to achieve a working configuration and the combination subject to the most dispute. Entrants purchasing local switching also gain access to the shared transport network element and access to operator and directory systems. Furthermore, although the local loop network element is not defined to include the NID, it is general practice to offer a loop/NID combination as a standard configuration.

[3] For instance, a number of CLECs that specialize in providing service to larger business customers require access to combinations of local loops and dedicated transport to extend their services beyond those end offices where they have established collocated facilities.

physical separation between loop and switching hardware. The local switch network element is fundamentally defined as the *functionality* provided by the local switch -- in fact, this network element is appropriately named the local switching capability network element.[4] Therefore, to comply with the framework of the 8th Circuit's decision only requires separating the local loop from the functionality of the local switch.

As explained by Mr. Falcone, the "recent change" process can be used to electronically separate the local loop from local switching capability and, just as importantly, can then be used by entrants to recombine these elements to reestablish a working configuration. The right to access the recent change process is already included within the core definition of the local switching network element. The Commission's rules define the local switching capability network element as:

> CFR § 51.319 (c)(1)(i) Local Switching Capability
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> (C) all features, functions, and capabilities of the switch, which include, but are not limited to:
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> (*1*) the basic switching function of connecting lines to lines, lines to trunks, trunks to lines, and trunks to trunks, as well as the same basic capabilities made available to the incumbent LEC's customers, such as a telephone number, white page listing, and dial tone; and
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> (*2*) all other features that the switch is capable of providing, including but not limited to custom calling, custom local area signaling service features, and Centrex, as well as any technically feasible customized routing functions provided by the switch.

Because the Commission had determined in the environment which preceded the 8th Circuit's decision that entrants only required indirect access to the recent change process -- that is, the entrant would request the activation/deactivation of features, functions and capabilities of the switch, while the ILEC would process the actual request -- systems have not been implemented to effect the more direct control envisioned by the 8th Circuit's decision. As a result, "firewall" protections must be implemented to seal-off one entrant's access to another entrant's customers[5] -- but only because the ILECs have chosen the path of separation and recombination over the far simpler and more economic choice to combine these elements or to provision existing combinations without disruption. Until

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[4] CFR § 51.319 (c)(1) Local Switching Capability.

[5] These firewalls are the electronic parallel to the physical cages used to separate entrants in the collocation scenario desired by the ILECs.

firewalls are established, the ILECs can provide "mediated" access to the recent change process in substantially the same manner as envisioned under the Commission's initial decision, coordinating the separation/recombination commands and limiting an entrant's access to the entrant's own customers.

Relying on the recent change process for the separation and recombination of the loop and local switching capability network elements is a natural extension of the Commission's prior decisions implementing the 1996 Act. Section 251(d)(2)(B) of the Act directed the Commission to consider whether the failure to provide access to an unbundled element "would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer." The Commission has interpreted the term "impair" to mean either increased cost or decreased service quality. Alternatives to the recent change process (i.e., collocation) impose discriminatory forms of access that increase the entrant's cost and decrease its service quality and must be rejected.

Furthermore, the recent change process is the only form of access that can achieve the Commission's policy to promote parity between local and long distance competition. The Commission's rules require ILECs to switch over customers for local service in the same interval as ILECs currently switch end users between interexchange carriers.[6] Importantly, switch-overs that require the ILEC to make physical modifications to its network, such as connecting a competitor's loop to its switch, are not subject to this requirement. Only the recent change process can be implemented in a manner which retains this important feature of the Commission's rules.

Finally, with the exception of those instances where loop facilities are first connected to the local switch, the recent change process is also the process most frequently used by the ILEC to initiate service to a new account.[7] Consequently, the non-discrimination standard can only be satisfied by a separation/recombination process using "recent change." The recent change process is the only alternative that avoids the manual intervention and physical rearrangement which the ILECs seek to impose on their competitors. The ILECs understand that the barriers they desire will effectively limit competitors to providing "hand-crafted" phone service -- a 20th century approach fundamentally at odds with a 21st century technology.

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[6] CFR § 51.319(c)(1)(ii).

[7] In those instances where a loop has not yet been connected to the switch, the ILEC should provide the entrant unencumbered access to the switch port to establish this connection.